



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Martin F. BACHMANN *et al.*

Appl. No.: 10/550,518 (U.S. Nat'l Phase of
PCT/EP2004/003165)

§ 371 Date: September 23, 2005

For: **Packaging of Immunostimulatory
Oligonucleotides Into Virus-Like
Particles: Method of Preparation
and Use**

Confirmation No.: 8347

Art Unit: 1633

Examiner: LI, Qian Janice

Atty. Docket: 1700.0630000/BJD/WBC

Reply to Restriction Requirement with Election of Species

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated May 22, 2007, requesting an election of one invention to prosecute in the above-referenced patent application, Applicant hereby provisionally elects to prosecute the invention of Group I, represented by claims 1-35, 100 and 101. In reply to the requirement for an election of species, Applicants hereby provisionally elect the following species:

- a. Antigen bound to said virus-like particle (claim 2), wherein said antigen is an HIV polypeptide (claim 14 item(f));
- b. Nonpeptide covalent bond (claim 3);
- c. Immunostimulatory substance: G8-8 SEQ ID NO:7 (claim 20(f)); and
- d. Virus-like particle comprising recombinant proteins or fragments thereof of RNA-phage bacteriophage Q β (claim 34(a)).

The aforementioned elections of restriction group and species are made without prejudice to or disclaimer of the other claims or inventions disclosed, and are made with traverse. Claims 1-108 and 111-113 are generic to the provisionally elected species. Claims 1-3, 5, 7-8, 10-11, 13-20, 32, 34-35 and 100 read upon each of the provisionally elected species in a, b, c and d.

The election of Restriction Group I is made with traverse because all the claims of Groups I-VII should be grouped and examined together. All claims can be examined without serious burden because a search of the art for the claims of Group I should find art also relevant to the claims of Group II-VII. Hence, reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

The election of species is also made with traverse, as a search for art relevant to the elected species should find art also relevant to all of the other species. Hence, Applicants request rejoinder and examination of all of the species together as so doing would not create an undue burden on the Examiner.

This traversal of the Restriction and Election of Species requirements should not be construed as a statement or an admission that the various groups and/or species identified by the Examiner are or are not patentably distinct. Instead, Applicants respectfully contend that the search required to examine all pending claims will not impose serious burdens on the Examiner. Imposition of a serious burden without restriction is a requirement for a proper restriction requirement and election of species requirement. *See* 37 C.F.R. § 1.141(a); *see also* MPEP §§ 803 and 806.04(b).

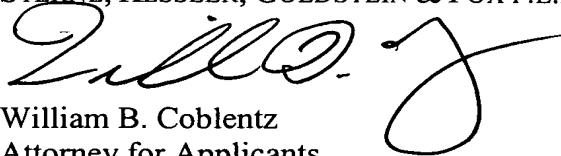
Applicants understand that upon allowance of the generic claims, Applicants will be entitled to allowance of a reasonable number of species in addition to the elected species. See 37 C.F.R. § 1.146.

The Examiner has objected to claims 11-35, 47, 50-52, 79-84, 95 and 97-101 because a multiple dependent claim cannot depend from another multiple dependent claim. Furthermore, the Examiner has objected to claim 13 because the claim recites "2 to 1." Applicants would like to direct the Examiner's attention to the Preliminary Amendment filed with the application in which the claims were amended to eliminate the multiple dependencies referred to by the Examiner.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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